

ORIGINAL

ORIGINAL  
FILE

RECEIVED

AUG 7 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment to Section 1.773 of the )  
Commission's Rules Regarding )  
Pleading Cycle for Petitions )  
Against Tariff Filings Made on )  
14 Days' Notice )

CC Docket No. 92-117

REPLY COMMENTS  
OF  
AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"), hereby replies to the comments received in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> By that proceeding, the Commission proposes to reduce even further the already inadequate time period for filing petitions to reject or suspend tariffs submitted on 14 days' notice.

ARINC concurs with the commentators that the proposed revisions would unreasonably shorten the period for interested parties to review and comment upon tariff filings. As a result, they would fail to achieve their asserted goal of permitting more effective agency review of tariff transmittals, because the Commission is likely to lose much of the benefit of public comment.

---

<sup>1</sup> Amendment to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice, 7 FCC Rcd 3386 (1991).

No. of Copies rec'd  
List A B C D E

045

ARINC is the communications company of the air transport industry and is owned by the major air carriers. Both ARINC and the airlines make extensive use of telecommunications services and facilities for the provision of aviation safety and operational services, private corporate network services, and public access services such as the airlines' reservations networks. As large users of telecommunications services, the industry is affected by the costs, terms, and conditions under which those services are offered. Consequently, ARINC frequently intervenes in common carrier tariff proceedings on behalf of the airlines.

The opening comments of the Television Networks<sup>2</sup> and the Telecommunications Marketing Association ("TMA")<sup>3</sup> accurately describe the many difficulties currently faced by tariff subscribers in identifying and raising to the FCC's attention problems with tariff transmittals. Within a nominal seven-day period, users must: (1) obtain notice of a tariff filing; (2) secure a copy of the filing during limited public reference room hours; (3) conduct a legal, technical, and financial analysis sufficient to meet their burden of proof to justify FCC action if necessary; (4) prepare appropriate

---

<sup>2</sup> Adjustment to Pleading Cycle, CC Docket No. 92-117, "Comments of Capital Cities/ABC, CBS, NBC, and TBS," filed July 23, 1992 ("Networks Comments").

<sup>3</sup> Adjustment to Pleading Cycle, CC Docket No. 92-117, "Comments of the Telecommunications Marketing Association," filed July 22, 1992 ("TMA Comments").

comments in documentary form for filing with the agency; (5) obtain the requisite corporate approvals; and (6) deliver the finished document to 1919 M Street.<sup>4</sup>

Even if the full seven days were reliably available, this would be a daunting task. But, inconsistencies in carrier compliance with user notification requirements, the admitted unreliability of the FCC's Tariff Review Log, and the carriers' strategic selection of filing dates that frequently deny users access to a transmittal until after an intervening weekend typically shorten the seven-day period substantially. Together with the general vagaries of the tariff notification and filing process, these factors ensure that much less than seven days will generally be available to protest the filing. As a result, the proposal to reduce the seven-day time period by one day is in practice likely to reduce the actual time available to users to about four days and in certain cases to less than two days.<sup>5</sup> Given the legal burden placed on petitioners to demonstrate the unreasonableness of tariff revisions with which they are specifically unfamiliar, the loss of even one day will effectively preclude meaningful participation in the tariff process.

---

<sup>4</sup> See generally TMA Comments at 2; Networks Comments at 2-5.

<sup>5</sup> See Network Comments at 2-4.

ARINC has experienced first hand the problems cited by the Networks and TMA. While ARINC sympathizes with the Commission's desire for more time to review the record in a tariff proceeding, it is no solution simply to reduce the number and quality of the parties' submissions by arbitrarily shortening further the time for their preparation. Rather, because the tariff filing process is largely under the control of the carriers, it would be better and fairer to reduce the carriers' reply time as suggested by the Networks.<sup>6</sup> This could be coupled with the establishment of a more timely and reliable notice mechanism for tariff filings and amendments,<sup>7</sup> and the requirement that all pleadings and related filings be either personally served or faxed on the due date.<sup>8</sup>

---

<sup>6</sup> Network Comments at 5-6.

<sup>7</sup> Although carriers must serve replies on petitioners, there currently is no requirement to serve amendments to the tariff proposals under review. These amendments often bear directly on the issues raised and should be served on the petitioners.

<sup>8</sup> ARINC opposes the carriers' recommendations that replies not be hand-delivered or faxed. See, e.g., Comments of BellSouth Telecommunications, Inc. at 7; Comments of Southwestern Bell Telephone Company at 3. This position suggests that the filing of a reply ends the period for discussing a particular matter with Commission staff. To the contrary, petitioners often must address inaccuracies in the replies or provide additional information. Thus, petitioners must have timely service of any replies or associated filings. The agency should not establish a discriminatory filing requirement for carriers.

Adoption of these mechanisms would have the salutary effect of keeping the public better informed about tariff filings, improving the quality of the comments submitted by interested parties, and affording the agency additional time to review those filings and the carriers' replies in order to make an informed determination whether or not to take action on a tariff. In contrast, the Commission's proposal would likely undermine rather than improve the tariff review process.

For the foregoing reasons, ARINC urges the Commission not to adopt its proposal to shorten the comment period for tariffs filed on 14 days' notice by one day and, instead, to adopt the suggestions discussed above to promote user participation in the tariff process.

Respectfully submitted,

AERONAUTICAL RADIO, INC.

By: 

John L. Bartlett  
Robert J. Butler  
Kurt E. DeSoto

of

WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

Its Attorneys

August 7, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 1992, I caused copies of the foregoing "Reply Comments of Aeronautical Radio, Inc.," to be mailed via first-class, postage prepaid, to the following:

Cheryl A. Tritt, Chief  
Common Carrier Bureau  
Room 500  
1919 M Street, N.W.  
Washington, D.C. 20554

Gregory J. Vogt, Chief  
Tariff Division  
Common Carrier Bureau  
Room 518  
1919 M Street, N.W.  
Washington, D.C. 20554

Ann H. Stevens, Chief  
Legal Branch, Tariff Division  
Common Carrier Bureau  
Room 518  
1919 M Street, N.W.  
Washington, D.C. 20554

Judith A. Nitsche, Chief  
Tariff Review Branch, Tariff Division  
Common Carrier Bureau  
Room 518  
1919 M Street, N.W.  
Washington, D.C. 20554

Floyd S. Keene, Esq.  
Mark R. Ortlieg, Esq.  
Ameritech Operating Companies  
2000 West Ameritech Center Drive  
Room 4H84  
Hoffman Estates, IL 60196-1025

James P. Tuthill, Esq.  
Betsy S. Granger, Esq.  
Pacific Bell and Nevada Bell  
140 New Montgomery Street, Room 1525  
San Francisco, CA 94105

William B. Barfield, Esq.  
Richard M. Sbaratta, Esq.  
Rebecca M. Lough, Esq.  
BellSouth Telecommunications, Inc.  
1155 Peachtree Street, N.E.  
Atlanta, GA 30367-6000

Durward D. Dupre, Esq.  
Richard C. Hartgrove, Esq.  
Thomas A. Pajda, Esq.  
Southwestern Bell Telephone Company  
1010 Pine Street, Room 2114  
St. Louis, Missouri 63101

Gail L. Polivy, Esq.  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

Lawrence E. Sarjeant, Esq.  
James T. Hannon, Esq.  
U S WEST Communications, Inc.  
1020 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

Martin T. McCue  
United States Telephone Association  
900 19th Street, N.W.  
Suite 800  
Washington, D.C. 20006-2105

Michael D. Lowe, Esq.  
Lawrence W. Katz, Esq.  
The Bell Atlantic Telephone Companies  
1710 H Street, N.W.  
Washington, D.C. 20006

Donald J. Elardo, Esq.  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006


Andrew O. Isar  
Telecommunications Marketing Association  
14405 SE 36th Street, Suite 300  
Bellevue, WA 98006

Randolph J. May, Esq.  
Timothy J. Cooney, Esq.  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Mr. Spencer L. Perry, Jr.  
Interexchange Resellers Association  
P.O. Box 5090  
Hoboken, NJ 07030

Francine J. Berry, Esq.  
Roy E. Hoffinger, Esq.  
American Telephone and Telegraph Company  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Downtown Copy Center  
Room 246  
1919 M Street, N.W.  
Washington, D.C. 20554

  
Kim Riddick